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October 6, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation, GEN Docket No. 90-314;
GEN Docket No. 90-314/ET Docket No. 92-100

Dear Mr. Caton:

On October 6, 1994, Phillip L. Spector and the undersigned, attorneys for Morgan Stanley Group Inc., met with Peter Tenhula, Office of the General Counsel, to discuss the above-captioned proceedings. A background paper, copies of which are attached hereto, was provided to him.

Sincerely yours,


Jon C. Garcia

Enclosures

No. of Copies rec'd 242
List A B C D E

**EX PARTE PRESENTATION -- BROADBAND/NARROWBAND PCS -- GEN DKT NOS. 90-314, 92-100
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Introduction

- For both broadband and narrowband PCS, the Commission on its own motion last summer adopted an attribution rule that counts all indirect interests in licensees on the basis of a "multiplier". Under this formula, a party's interest in a licensee is equal to the product of the ownership interests held by each intervening entity.
- As discussed below, the multiplier rule will preclude investment in broadband and narrowband PCS by certain institutional investors, which represent an important source of growth capital -- particularly for the privately held, entrepreneurial companies that will be seeking PCS licenses. As a result, some of these companies will have a reduced ability to bid in the upcoming PCS auctions.
- The Morgan Stanley Partnerships filed a petition seeking reconsideration of the Commission's broadband multiplier rule, and will file a similar petition regarding the narrowband multiplier.

Overview Of The Morgan Stanley Partnerships and Institutional Investing

- The Morgan Stanley Partnerships are limited partnerships, in which institutional investors hold limited partnership interests, and the general partners (affiliates of Morgan Stanley Group, Inc.) have exclusive control over the partnership assets. Numerous other investment partnerships have a similar structure.
- In such partnerships, limited partners have no control over the partnership's investments. They do not select, manage, or dispose of investments. They have no power to vote securities held by the partnership.
- Institutional investors, such as pension funds, invest with many portfolio managers to minimize risk. They rely on outside portfolio managers and general partners to decide which industry sectors and companies to invest in.
- Due to their reliance on professional managers and lack of extensive staff, most institutional investors have only general knowledge regarding the companies in which they indirectly invest. They do not monitor the details of these companies' businesses, such as the acquisition of FCC radio licenses. Instead, institutions track the performance of the assets invested by each manager.
- Through their indirect investments, pension funds and other institutions will be providing much of the capital for PCS, but only if the multiplier rule is changed.

Application Of The Multiplier Will Discourage Investment In PCS

- Institutional investors can rely on each outside manager (including general partners of partnerships) to monitor that manager's investments, but cannot rely on their outside managers to coordinate jointly the investor's entire portfolio of investments. Thus, even if the investments made by one manager comply with the FCC's rules, these institutions, which invest through multiple vehicles, would risk violating the rules. This risk will deter PCS investment.

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Pursuant to 47 C.F.R. § 1.1206(a)(2), two copies of this document have been submitted to the Secretary of the Federal Communications Commission.

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- Institutional investors will not be willing (and lack the staff) to evaluate the effect of each indirect holding on the investors' compliance with FCC rules. If the FCC rules effectively require these investors to make such an evaluation in the PCS context, their investment managers will receive a simple message: steer clear of PCS. This will be the case even where the institutional investor exercises no control or influence over the licensee.
- Some institutional investors may face additional constraints (for example, an RBOC pension fund could be subject to the MFJ). Attributing indirect interests based on a multiplier could unintentionally affect other holdings or cause inadvertent violations of other laws.

The Morgan Stanley Proposal

- The multiplier should not be applied to PCS. Rescinding the multiplier rule for limited partnership investments in PCS will permit the greatest amount of growth capital to invest in PCS, with no risk that limited partners will exercise control over licenses.
- As the FCC has recognized in the broadcast context, the multiplier is unduly harsh if applied indiscriminately to institutional investors. If the multiplier is to be retained, the Commission should consider a single majority shareholder exception, a higher attribution threshold (perhaps 10%), and a compliance grace period of at least one year.